

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
McALLEN DIVISION**

**GUERRA & MOORE, LTD., LLP,**  
**Plaintiff**

**VS.**

**MARCO A. CANTU, et al.,**  
**Defendants**

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**CIVIL ACTION NO.**

**7:11-CV-299**

**DEFENDANT SANDRA DIAZ'S OPPOSED EMERGENCY MOTION TO STAY  
ISSUANCE OF WRIT OF ASSISTANCE**

TO THE HONORABLE UNITED STATES JUDGE:

NOW COMES SANDRA DIAZ, Defendant, files this Opposed Emergency Motion to Stay Issuance of Writ of Assistance, and in support thereof, would respectfully show:

1. On July 27, 2017, the Court entered an Order of Judicial Foreclosure.
2. The Order of Judicial Foreclosure directs that the U.S. Marshall [sic] sell the following property by virtue of a writ of execution and sale:  
  
**Lot Nine (9), Block Four (4), Highland Park, an addition to the City of McAllen, Hidalgo County, Texas, as per the map or plat thereof, recorded in Volume 10, Page 12, Map Records, Hidalgo County, Texas.**
3. The Order of Judicial Foreclosure does not provide that Defendants or any occupants of the property shall be divested of possession or evicted.
4. Fed. R. Civ. P. 70(d) states:

**Rule 70. Enforcing A Judgment For A Specific Act.**

(d) Obtaining A Writ of Execution or Assistance. On application by a arty who obtains a judgment or order of possession, the clerk must issue a writ of execution or assistance.

Fed. R. Civ. P. 70(d).

5. On August 23, 2017, Plaintiff's counsel informed Defendant's counsel that Plaintiff's counsel intended to obtain a writ of assistance and have the U.S. Marshal evict the occupants within the next two weeks.
6. Under the express provisions of Fed. R. Civ. P. 70(d), a party is entitled to issuance of a writ of assistance only if it has a judgment or order of possession. Plaintiff in the instant case does not have a judgment or order for possession; therefore, any issuance of a writ of assistance in the instant case would be illegal and unlawful at this time.
7. Movant prays that the Court issue an order staying the issuance of any writ of possession.
8. Because of the time-sensitive nature of this matter, and in an effort to prevent interruption of possession of the premises, Movant prays that the Court set this matter for an emergency hearing.

WHEREFORE, PREMISES CONSIDERED, Defendant Sandra Diaz prays that the Court set this matter for an emergency hearing, and that thereafter the Court enter an Order staying or prohibiting the issuance of a writ of assistance in the instant case, and for such other and further relief to which Defendant Sandra Diaz may be justly entitled.

Respectfully submitted,

/s/Kelly K. McKinnis  
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**ATTORNEY FOR DEFENDANT  
SANDRA DIAZ**

**CERTIFICATE OF SERVICE**

I certify that on August 23, 2017, a true copy of this document was served via ECM/ECF upon:

David J. Lumber ( [dlumber@guerrallawgroup.com](mailto:dlumber@guerrallawgroup.com) )

Diann Bartek ( [dbartek@dykema.com](mailto:dbartek@dykema.com) )

Jeanna Long ( [jlong@dykema.com](mailto:jlong@dykema.com) )

/s/Kelly K. McKinnis

Kelly K. McKinnis

**CERTIFICATE OF CONFERENCE**

I certify that on August 23, 2017 at approximately 3:10 p.m. I conferred with David Lumber, attorney for Plaintiff, and he indicated that he OPPOSED this motion.

/s/Kelly K. McKinnis

Kelly K. McKinnis